

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING
Rule I, the amendment of ARM	)	ON PROPOSED ADOPTION,
37.78.102, 37.78.103, 37.78.215,	)	AMENDMENT, AND REPEAL
37.78.216, 37.78.402, 37.78.406,	)	
37.78.420, and 37.78.806, and the	)	
repeal of ARM 37.78.425 pertaining to	)	
Temporary Assistance for Needy	)	
Families (TANF)	)	

TO: All Interested Persons

1. On April 16, 2008, at 9:30 a.m., the Department of Public Health and Human Services will hold a public hearing in the Sapphire Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on April 7, 2008. Please contact Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena MT 59620-2951; telephone (406)444-9503; fax (406)444-9744; e-mail dphhslegal@mt.gov.

3. The rule as proposed to be adopted provides as follows:

RULE I TANF CASH ASSISTANCE POST-EMPLOYMENT PROGRAM

(1) Households who are losing eligibility for TANF cash assistance due to the receipt of new or increased earned income may be eligible for no more than three months of assistance under the TANF Cash Assistance Post-Employment Program if:

(a) the household is losing TANF cash assistance eligibility due to new or increased earnings from employment of an individual who is currently receiving TANF cash assistance and the new or increased earned income was:

(i) reported within ten calendar days of the participant's knowledge of the change;

(ii) verified within ten calendar days from the request for verification;

(b) the household has not received at least one month of TANF cash assistance post-employment benefits in the prior 12 months;

(c) the household received TANF cash assistance in the month of closure;

(d) the household is not currently receiving TANF cash assistance extended benefits; and

(e) the household meets all financial and nonfinancial eligibility for the TANF Cash Assistance Program including negotiating a Family Investment Agreement/Employability Plan (FIA/EP) as outlined in ARM 37.78.806 and 37.78.216.

(2) Earned income of the assistance unit is disregarded under the TANF Cash Assistance Post-Employment Program as outlined in ARM 37.78.406.

(3) All other income of the assistance unit is treated as outlined in ARM 37.78.402, 37.78.406, and 37.78.416.

(4) The Post-Employment Program is a time limited program. Households that are eligible for this program may receive up to three months of benefits. Payment standards for the Post-Employment Program are outlined in ARM 37.78.420. For each month of assistance provided under the Post-Employment Program, the time clock of the individuals receiving assistance will increment as outlined in ARM 37.78.201. However, households may not exceed their 60-month time clock by receipt of a Post-Employment benefit.

(5) Households receiving benefits under the Post-Employment Program are considered TANF recipients and are therefore eligible to receive TANF child care assistance in order to participate in the allowable work activities as negotiated in their FIA/EP.

(6) Households receiving benefits under the Post-Employment Program are considered TANF recipients and are eligible to receive TANF supportive service payments as outlined in ARM 37.78.832.

AUTH: 53-4-212, MCA

IMP: 53-4-211, MCA

4. The rules as proposed to be amended provide as follows. New matter is underlined. Matter to be deleted is interlined.

37.78.102 TANF: FEDERAL REGULATIONS ADOPTED BY REFERENCE

(1) remains the same.

(2) The "Montana TANF Cash Assistance Manual" dated ~~January 1, 2008~~ July 1, 2008 is adopted and incorporated by this reference. A copy of the Montana TANF Cash Assistance Manual is available for public viewing at each local Office of Public Assistance, and at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., 5th Floor, P.O. Box 202925, Helena, MT 59620-2925. Manual updates are also available on the department's web site at [www.dphhs.mt.gov](http://www.dphhs.mt.gov).

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.103 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF):  
DEFINITIONS The following definitions apply to this chapter:

(1) through (40) remain the same.

(41) "Post-Employment Program" means the TANF Cash Assistance Program that is available to households which are losing eligibility for TANF cash

assistance based on new or increased earned income of an individual currently receiving TANF cash assistance, but which will continue to receive a limited TANF cash assistance benefit through the "Post-Employment Program" for a period not to exceed three months.

(41) through (63) remain the same but are renumbered (42) through (64).

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.215 TANF: TANF CASH ASSISTANCE; CHILD SUPPORT ENFORCEMENT COOPERATION REQUIREMENTS (1) through (2) remain the same.

(3) The requirement of cooperation in establishing paternity and obtaining child support may be waived if good cause is shown. For purposes of this rule, good cause exists if one of the following circumstances exists, and as a result of that circumstance cooperation would be detrimental to the child:

(a) through (d) remain the same.

(e) the parental rights to the child have been terminated by a court of competent jurisdiction; ~~or~~

(f) the absent parent is listed on the Montana Department of Justice Sexual or Violent Offender Registry; or

~~(f)~~ (g) any other situation which makes cooperation with child support requirements detrimental to the child.

(4) through (9) remain the same.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.216 TANF: TANF CASH ASSISTANCE FIA/WORC EMPLOYABILITY PLAN (FIA/EP) (1) The FIA/WoRC Employability Plan (FIA/EP) is a negotiated document listing eligibility requirements, allowable work activities as defined in ARM 37.78.103 and 37.78.807, and mutual obligations of the state and the participant regarding the course of action leading to the individual's employment and the number of hours and the time limits within which such activities and obligations shall be performed.

(a) The following individuals are required to negotiate and comply with a FIA/EP as a condition of eligibility in the TANF Cash Assistance Program or TANF Cash Assistance Post-Employment Program:

(i) through (d) remain the same.

(e) Failure to perform the activities required in the FIA/EP and/or to provide verification and/or documentation of participation in the activities on a timely basis will result in sanctions in accordance with ARM 37.78.506, unless the individual is receiving TANF cash assistance through the Post-Employment Program, in which case failure will result in case closure.

(2) Because entering into a FIA/EP is a condition of eligibility for TANF Cash Assistance and the TANF Cash Assistance Post-Employment Program, failure or refusal without good cause to enter into a FIA/EP initially or to renegotiate and/or

sign a new FIA/EP when requested will result in the denial of or termination of assistance for the entire assistance unit.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, 53-4-606, MCA

37.78.402 TANF: TREATMENT OF INCOME (1) through (6) remain the same.

(7) If an individual would be required by ARM 37.78.208 to be included in the assistance unit except that the individual is not eligible because they are not a U.S. citizen or qualified alien, or they are a parole probation violator, fleeing felon, a person who has committed an intentional program violation ~~or a convicted drug felon as stated in ARM 37.78.206(3)(f) through (h) and 37.78.505~~, an individual who is sanctioned for noncompliance in allowable work activities as defined in ARM 37.78.103 and 37.78.807 or sanctioned for failure to accept and maintain employment without good cause, or an individual who has intentionally misrepresented their place of residence in order to obtain assistance simultaneously from two or more states, the income of that individual will be counted in determining the assistance unit's eligibility and grant amount even though the individual's needs are not included in the grant.

(8) through (10)(b) remain the same.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.406 TANF: TANF CASH ASSISTANCE; INCOME DISREGARDS AND INCOME DEEMING (1) remains the same.

(2) When testing countable monthly income and determining the amount of the assistance payment, the following amounts are subtracted in the order listed from the earned income of each wage earner in the assistance unit after exclusions provided in ARM 37.78.415 and 37.78.416:

(a) through (c)(i) remain the same.

(d) One hundred percent of the countable earned income of each wage earner when the household is eligible for the TANF Cash Assistance Post-Employment Program.

(3) through (6) remain the same.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.420 TANF: ASSISTANCE STANDARDS; TABLES; METHODS OF COMPUTING AMOUNT OF MONTHLY BENEFIT PAYMENT (1) Income standards as set forth in this rule are used to determine whether need exists with respect to income for any person who applies for or receives TANF cash assistance or TANF cash assistance Post-Employment Program benefits and to determine the benefit amount the assistance unit will receive if eligible. Four sets of assistance standards are used which are as follows:

(a) through (c) remain the same.

(d) The payment standard is used to determine the amount of the monthly cash payment in the TANF cash assistance program and is based on the size of the assistance unit, unless the household is receiving benefits through the TANF Cash Assistance Post-Employment Program. Payment standards in the Post-Employment Program are a set amount as defined in (4)(e). This amount is not based on household size. ~~This~~ The household's net countable income is subtracted from the payment standard to determine the amount of the payment for the TANF case assistance unit. This amount is prorated for the month of application if eligibility is for less than a full month.

(2) and (3) remain the same.

(4) The GMI standards, NMI standards, and benefits standards are as follows:

(a) Gross monthly income standards are compared with the assistance unit's gross monthly income as defined in ARM ~~37.78.103~~ 37.78.406.

GROSS MONTHLY INCOME STANDARDS (GMI)

Number of Persons in Household	Gross Monthly Income (GMI)
1	\$ 522
2	703
3	884
4	1,066
5	1,249
6	1,430
7	1,611
8	1,793
9	1,974
10	2,155
11	2,337
12	2,518
13	2,699
14	2,880
15	3,062

16	3,245
17	3,426
18	3,608
19	3,789
20	3,970

(b) remains the same.

(c) Benefit standards are compared with the assistance unit's countable income as defined in ARM ~~37.78.403~~ 37.78.406.

BENEFITS STANDARDS

1	\$ 221
2	298
3	375
4	452
5	530
6	607
7	684
8	761
9	838
10	915
11	991
12	1,068
13	1,145
14	1,222
15	1,299
16	1,377
17	1,454
18	1,531
19	1,608

20

1,685

(d) The payment standards for the TANF Cash Assistance Program are compared to the assistance unit's net countable income as defined in ARM ~~37.78.103~~ 37.78.406.

PAYMENT STANDARDS

(33% of the FY 2007 Federal Poverty Level)

1	\$ 281
2	376
3	472
4	568
5	664
6	759
7	855
8	951
9	1,046
10	1,142
11	1,238
12	1,333
13	1,429
14	1,525
15	1,621
16	1,716
17	1,812
18	1,908
19	2,003
20	2,099

(e) The payment standards for the TANF Cash Assistance Post-Employment Program are compared to the assistance unit's net countable income as defined in ARM 37.78.406 and are set at the following:

POST-EMPLOYMENT  
PAYMENT STANDARDS

<u>1st Month</u>	<u>\$ 375</u>
<u>2nd Month</u>	<u>275</u>
<u>3rd Month</u>	<u>175</u>

(5) The adult's gross monthly earned income as defined in ARM 37.78.103 and ARM 37.78.406 is compared to the applicable GMI limit. If the assistance unit's GMI exceeds the GMI limit, the assistance unit is ineligible for assistance. Monthly income is compared to the full limit even if the eligibility is being determined for only part of the month. When comparing income to the income limits, income anticipated to be received in the benefit month is used.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-241, 53-4-601, MCA

37.78.806 TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING: PARTICIPATION (1) All participants in the TANF Cash Assistance Program or the TANF Cash Assistance Post-Employment Program who are required to negotiate and comply with their FIA/WoRC Employability Plan (FIA/EP) as outlined in ARM 37.78.216 are required to participate in allowable work activities as defined in ARM 37.78.103 and 37.78.807 and as provided in these rules. The above-named individuals must participate in allowable work activities as indicated in the FIA/EP if they are referred to the WoRC Program for case management, or as indicated in their tribal NEW plan if they are referred to the tribal NEW program for case management.

(2) remains the same.

~~(3) A WoRC participant who loses eligibility for the TANF Cash Assistance Program due to employment may, if the participant's case manager approves, receive case management services for up to 180 days after the last day of the last month of eligibility for TANF cash assistance.~~

AUTH: 53-4-212, MCA

IMP: 53-2-201, 53-4-211, 53-4-601, 53-4-613, MCA

5. ARM 37.78.425, TANF: NONFINANCIAL ASSISTANCE PAYMENT, as proposed to be repealed is on page 37-16979 of the Administrative Rules of Montana.

AUTH: 53-4-212, MCA

IMP: 53-2-211, 53-4-601, 53-4-603, MCA

6. The Department of Public Health and Human Services is proposing to



adopt New Rule I, amend ARM 37.78.102, 37.78.103, 37.78.215, 37.78.216, 37.78.402, 37.78.406, 37.78.420, and 37.78.806, and repeal 37.78.425 pertaining to Temporary Assistance for Needy Families (TANF).

#### Rule I TANF CASH ASSISTANCE POST-EMPLOYMENT PROGRAM

The department is proposing the addition of a Post-Employment Program that would benefit households which would otherwise lose eligibility for TANF cash assistance due to new or increased earned income of an individual currently receiving TANF cash assistance. Households would be eligible to receive an assistance payment in a set amount for a period up to, but not exceeding, three months. The payment amounts would be set at \$375 the first month; \$275 the second month; and \$175 the third month.

Individuals in this program would be required to negotiate a Family Investment Agreement/Employability Plan (FIA/EP) with the WoRC Program that would include their employment hours as allowable work activities. This negotiated plan would allow them to avail themselves of the job retention resources available through the WoRC Program, including a required once a month case management meeting. It is hoped that by offering job retention services and resources, a higher number of individuals will retain their employment and not return to TANF cash assistance following the Post-Employment Program.

Individuals in this program are considered TANF recipients and therefore would be eligible for TANF child care services for the employment hours that were negotiated in the FIA/EP. They would also be eligible to receive TANF supportive services to assist with continued participation and employment.

For each month of assistance provided under the Post-Employment Program, the time clock of the individuals receiving assistance will continue to accrue. However, households may not exceed their 60-month time clock by receipt of a Post-Employment benefit.

The department will benefit from retaining these individuals as TANF recipients by being able to count their employment hours in the work participation rate calculation.

The implementation of the TANF Post-Employment Program will have a positive impact on TANF cash assistance participants as it will allow them to avail themselves of job retention services and resources leading to continued self-sufficiency through employment.

This change will apply to an average of approximately 3,175 TANF cases currently receiving cash assistance. It is estimated that approximately 1,518 of the above mentioned households will meet eligibility criteria for this program. At the estimated cost per household of \$825, the additional cost to the state is estimated to be \$1,252,350.

### ARM 37.78.102

ARM 37.78.102 currently adopts and incorporates by reference the TANF policy manual effective January 1, 2008. The department proposes to make some revisions to this manual that will take effect on July 1, 2008. The proposed amendments to ARM 37.78.102 are necessary in order to incorporate into the Administrative Rules of Montana the revised versions of the policy manuals and publication of this notice is intended to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the TANF manual could affect approximately 7,998 TANF recipients. Manuals and draft manual material are available for review in each local Office of Public Assistance and on the department's web site at [www.dphhs.mt.gov](http://www.dphhs.mt.gov).

### ARM 37.78.103

This rule has been updated to include a definition of the TANF Cash Assistance Post-Employment Program. Further details of this program are outlined in the rationale for New Rule I above.

The implementation of the TANF Post-Employment Program will have a positive impact on TANF cash assistance participants as it will allow them to avail themselves of job retention services and resources leading to continued self-sufficiency through employment.

This change will apply to an average of approximately 3,175 TANF cases currently receiving cash assistance. It is estimated that approximately 1,518 of the above mentioned households will meet eligibility criteria for this program. At the estimated cost per household of \$825, the additional cost to the state is estimated to be \$1,252,350.

### ARM 37.78.215

This rule has been updated to reflect a decision of the department to include in the list of circumstances constituting good cause for waiving the requirement to cooperate in establishing paternity or obtaining child support, the additional circumstance of the absent parent being listed on the Montana Department of Justice Sexual or Violent Offender Registry.

This change will have a positive impact on TANF cash assistance participants.

This change will apply to an average of approximately 3,175 TANF cases. There will be no additional cost to the state.

### ARM 37.78.216

This rule has been updated to add the requirement that individuals who are receiving TANF cash assistance through the Post-Employment Program (as outlined in New

Rule I) to negotiate and agree to comply with a Family Investment Agreement/Employability Plan (FIA/EP) as a condition of eligibility for the program, and providing that failure to negotiate a FIA/EP or to comply with the activities negotiated in the FIA/EP will result in case denial or closure rather than sanction.

The implementation of the TANF Post-Employment Program will have a positive impact on TANF cash assistance participants as it will allow them to avail themselves of job retention services and resources leading to continued self-sufficiency through employment.

This change will apply to an average of approximately 3,175 TANF cases currently receiving cash assistance. It is estimated that approximately 1,518 of the above mentioned households will meet eligibility criteria for this program. At the estimated cost per household of \$825, the additional cost to the state is estimated to be \$1,252,350.

#### ARM 37.78.402

This rule is being updated to reflect accurately the current policy that allows for income of an individual who is disqualified from receiving TANF cash assistance due to sanction or due to intentionally misrepresenting their place of residence in order to gain assistance from two or more states simultaneously, to be counted as income to the assistance unit, even though the individual is not included in the grant amount. This is simply an update to the ARM to clarify current policy. We have also struck the language in this ARM that refers to the counting of the income of individuals who are convicted drug felons as outlined in ARM 37.78.206(3)(f) through (h) and 37.78.505 as such cases would be closed, and therefore there would be no need to count income of such individuals.

#### ARM 37.78.406

This rule has been updated to add a reference to ARM 37.78.415 in addition to ARM 37.78.416 which outline income exclusions. ARM 37.78.415 was inadvertently missing from this ARM.

This ARM has also been updated to add information regarding the disregarding of countable earned income of individuals who meet eligibility for the TANF cash assistance Post-Employment Program as outlined in New Rule I. By disregarding the countable earned income, households will be able to avail themselves of the benefits in the Post-Employment Program, including job retention skills, TANF child care, and TANF supportive service payments.

No controversy is anticipated over this update.

The implementation of the TANF Post-Employment Program will have a positive impact on TANF cash assistance participants as it will allow them to avail themselves of job retention services and resources leading to continued self-

sufficiency through employment.

This change will apply to an average of approximately 3,175 TANF cases currently receiving cash assistance. It is estimated that approximately 1,518 of the above mentioned households will meet eligibility criteria for this program. At the estimated cost per household of \$825, the additional cost to the state is estimated to be \$1,252,350.

#### ARM 37.78.420

This ARM has been updated to establish the income guidelines for the TANF cash assistance Post-Employment Program. Under this program, the countable earned income of the TANF cash assistance recipients will be disregarded entirely. The unearned income of the household will remain as countable income and will be compared to the Gross Monthly Income (GMI) test, the Benefit Standard and the Payment Standard for the program.

The Payment Standard for the Post-Employment Program is a set amount of \$375 for the first month; \$275 the second month; and \$175 the third month, regardless of household size.

This ARM is also updated to reference ARM 37.78.406 instead of ARM 37.78.103 for the correct definitions of the income standards.

The implementation of the TANF Post-Employment Program will have a positive impact on TANF cash assistance participants as it will allow them to avail themselves of job retention services and resources leading to continued self-sufficiency through employment.

This change will apply to an average of approximately 3,175 TANF cases currently receiving cash assistance. It is estimated that approximately 1,518 of the above mentioned households will meet eligibility criteria for this program. At the estimated cost per household of \$825, the additional cost to the state is estimated to be \$1,252,350.

#### ARM 37.78.425

This ARM is being removed as the funding for the work support payments is no longer available due to the implementation of the TANF cash assistance Post-Employment Program. At this time there are no nonfinancial assistance payments available.

#### ARM 37.78.806

This ARM has been updated necessarily to reflect the requirement that all participants in the TANF cash assistance Post-Employment Program who are required to negotiate and comply with the Family Investment

Agreement/Employability Plan (FIA/EP) are also required to participate in allowable work activities as outlined in ARM 37.78.103 and 37.78.807.

This ARM is also being updated to remove the section that indicates individuals who lose eligibility for TANF cash assistance due to employment may, with approval, receive case management services for up to 180 days. This is no longer necessary in light of the establishment of the TANF cash assistance Post-Employment Program.

Following is a brief overview of the TANF manual sections with substantive changes related to the above ARM changes.

TANF 001 - Monthly Income Standards

TANF 001 is being updated to reflect the Payment Standards for the TANF cash assistance Post-Employment Program. Payment standards are set at \$375 the first month; \$275 the second month; and \$175 the third month, regardless of household size.

TANF 306-2 - Child Support Good Cause Claim

TANF 306-2 is being updated to allow good cause and waive the requirement to cooperate in establishing paternity or obtaining child support if the absent parent is listed on the Montana Department of Justice Sexual or Violent Offender Registry.

TANF 602-1 - Income Disregards

TANF 602-1 is being updated to reflect the disregarding of the countable earned income of individuals who are eligible for the Post-Employment Program.

TANF 603-1 - Income Tests and Grant Calculations

TANF 603-1 is being updated to reflect the budgeting process for the TANF cash assistance Post-Employment Program.

TANF 704-2 - Work Support Payments

TANF 704-2 is being removed from the manual as the Work Support Payments will be discontinued effective July 1, 2008 due to the implementation of the Post-Employment Program.

7. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena MT 59620-2951, no later than 5:00 p.m. on April 24, 2008. Comments may also be faxed to (406)444-9744 or e-mailed to [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov). The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of

State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

10. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ Francis X. Clinch  
Rule Reviewer

/s/ John Chappuis for  
Director, Public Health and  
Human Services

Certified to the Secretary of State March 17, 2008.